Supreme Court, U.S.
FILED
JAN 17 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1015

In The Supreme Court of The United States
October Term, 1988

MARIE CULLY,

Petitioner,

v.

GRACE HOSPITAL,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

Brief of Respondent Grace Hospital

IN OPPOSITION

ALBERT J. RHOA
RONALD V. RAWLIN
Counsel of Record

RHOA, FOLLEN & RAWLIN
CO., L.P.A.
1850 Midland Building
101 Prospect Ave., West
Cleveland, Ohio 44115
(216) 861-6886

Attorneys for Respondent,
Grace Hospital

No. 88-1015

In The Supreme Court of The United States
October Term, 1988

MARIE CULLY,

Petitioner,

v.

GRACE HOSPITAL,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

Brief of Respondent Grace Hospital

IN OPPOSITION

ALBERT J. RHOA
RONALD V. RAWLIN
Counsel of Record

RHOA, FOLLEN & RAWLIN
CO., L.P.A.
1850 Midland Building
101 Prospect Ave., West
Cleveland, Ohio 44115
(216) 861-6886

Attorneys for Respondent,
Grace Hospital

QUESTIONS PRESENTED FOR REVIEW

1. Whether a federal district court has the power to limit the discovery practice of litigants?

2. Whether a federal district court must make findings of fact and conclusions of law when it grants summary judgment?

3. Whether a federal district court denies a party due process of law when it grants summary judgment?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW . . . i

TABLE OF AUTHORITIES . . . iii

STATEMENT OF THE CASE . . . 1

I. Procedural History . . . 1

II. Relevant Facts . . . 4

SUMMARY OF THE ARGUMENT . . . 7

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI . . . 8

The Petition for Writ of Certiorari Fails to Demonstrate That This Case Is Worthy of Review . . . 8

I. The Petitioner Has Failed to Demonstrate Conflicting Decisions by the Federal Courts of Appeals . . . 11

II. The Petitioner Has Failed to Identify an Important Federal Question Worthy of Review . . . 16

CONCLUSION . . . 19

TABLE OF AUTHORITIES

A. Cases

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) . . . 14

Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F.2d 425 (6th Cir. 1962) . . . 14

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) . . . 18

Donaldson v. Pillsbury, 406 F. Supp. 1210 (D.C. Minn. 1976) . . . 19

Goldberg v. Kelly, 397 U.S. 254 (1970) . . . 15

Hill v. McDermott, Inc., 827 F.2d 1040 (5th Cir. 1987). . . 18

Hindes v. United States, 326 F.2d 150 (5th Cir. 1964), cert. denied, 377 U.S. 908 (1964) . . . 14,15

Peters v. Middlebury College, 409 F. Supp. 857 (D.C. Vt. 1976) . . . 17

Randolph-Sheppard Vendors of America, Inc. v. Harris, 628 F.2d 1364 (D.C. Cir. 1980) . . 15

Schaulis v. CTB/McGraw Hill, Inc., 496 F. Supp. 666 (N.D. Ca. 1980) . . . 17

B. Federal Rules of Civil Procedure

Rule 26 . . . 12

Rule 26(b) . . . 11

Rule 37 . . . 12

Rule 52(a) . . . 14

Rule 56(c) . . . 16

C. Rules of the Supreme Court of the United States

Rule 17.1 . . . 8,9,19

Rule 17.1(a) . . . 10

Rule 17.1(c) . . . 10

D. Other Authority

2 J. Moore, A. Vestal & P. Kurkland, Federal Practice and Procedure Section 15.02[1] (1984) . . . 12

STATEMENT OF THE CASE

Respondent, Grace Hospital, respectfully requests that this Honorable Court deny Marie Cully's Petition for Writ of Certiorari.

Petitioner has failed to demonstrate any conflict among decisions by the federal courts of appeals. Further, Petitioner has failed to identify any important federal question worthy of this Court's consideration.

Therefore, this Honorable Court should deny the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

I. Procedural History

On December 23, 1986, Petitioner filed a Complaint against Respondent alleging that it conspired to deprive her of her civil rights. In her Complaint, which was filed with the United States

District Court for the Northern District of Ohio, Petitioner alleged that Grace Hospital fired her in retaliation for having filed a discrimination claim against another hospital, Lutheran Medical Center. Petitioner claimed that Grace Hospital hired and later fired her for the sole reason of impoverishing her and rendering her financially unable to pursue her discrimination claim.

Petitioner's conspiracy claim was never supported by any credible evidence. Rather, all of the evidence presented at the district court level demonstrated a non-discriminatory justification of Grace Hospital's employment decision to dismiss Petitioner.

During the pendency of her claim, Petitioner requested that Grace Hospital produce the personnel files of all employees terminated by Respondent. Grace Hospital objected to this discovery

request on the grounds of relevancy and oppression. In the spirit of cooperation, however, Respondent identified the names of its dismissed employees, the employees' positions and the reasons for their dismissals. Information beyond that which was provided by Grace Hospital would have been irrelevant and invasive. Subsequently, Petitioner filed a motion to compel discovery which was denied by the district court.

On August 10, 1987, Respondent moved the district court for an order granting summary judgment in its favor and against Petitioner. The evidence of the case showed conclusively that Grace Hospital terminated Marie Cully's employment for the reason that Petitioner failed to demonstrate the ability to perform safely the duties of a respiratory therapist, the position for which she was hired.

From all of the evidence, reasonable minds could have come to but one conclusion, a conclusion in favor of Respondent and adverse to Petitioner. Also, there were no issues remaining for trial, and Grace Hospital was entitled to judgment as a matter of law. Accordingly, the district court entered an order granting final judgment in favor of Respondent.

II. Relevant Facts

In her Complaint, Petitioner alleged that Respondent conspired to deprive her of her civil rights. Petitioner claimed that Grace Hospital terminated her employment as a respiratory therapist for the sole reason of improverishing her and rendering her unable to pursue a discrimination claim which she filed against a previous employer. Respondent rebutted completely this charge of conspiracy with

evidence of a non-discriminatory justification of its employment decision.

During her pre-employment interview with Grace Hospital, Petitioner represented herself as a qualified respiratory technician, able to perform the necessary duties of the job, including the ability to draw and sample arterial blood gases. As a new employee of the Respiratory Therapy Department, Petitioner was required to complete an in-service training program. This training program is given to insure that the therapist is qualified to draw safely arterial blood gases from the hospital's patients. To pass this program, the new employee must successfully complete ten blood gas drawings. Petitioner attempted sixteen such drawings, and was unable to complete successfully any of these procedures without direction or assistance.

Hospital procedure requires an employee who fails to meet the above-mentioned requirements to complete a training course which includes practicing on an artificial arm. After the hospital supervisors suggested to Petitioner that she complete this training program, Ms. Cully became hostile and insisted that she be allowed to practice drawing samples from the hospital's patients. For obvious reasons, Petitioner could not have been allowed to "practice" her skills on patients.

Since Petitioner failed to demonstrate the ability to perform the duties of a respiratory therapist, and since Petitioner refused to take the hospital's training course, Grace Hospital had no choice but to terminate Ms. Cully's employment. Significantly, Petitioner herself acknowledged that the inability to

draw arterial blood gases is grounds for dismissal of a respiratory therapist.

The district court found, and the court of appeals affirmed, that Petitioner failed to prove that she had been fired by Grace Hospital in retaliation for having filed a discrimination claim against another hospital.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari fails to demonstrate that this case is worthy of review.

This Court and the various circuits are in agreement concerning the power of a district court to monitor and regulate the discovery practice of litigants. The circuits agree that the district court is vested with a discretionary power to limit discovery which is burdensome, oppressive or intrusive.

Additionally, there is a consensus among the federal circuits that a district court need not make findings of fact and conclusions of law when it grants summary judgment.

Finally, the issues raised by Petitioner do not present an important federal question. It is well settled that a litigant is not denied due process of law when summary judgment is entered against her.

For these reasons, this Court should deny Petitioner's request for a writ of certiorari.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

The Petition for Writ of Certiorari Fails to Demonstrate That This Case Is Worthy of Review

Supreme Court Rule 17.1 sets forth the criteria for granting a writ of certiorari. The rule provides:

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

* * *

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Sup. Ct. R. 17.1.

Nowhere in her Petition does Marie Cully claim that the United States Court of Appeals for the Sixth Circuit rendered a decision in conflict with the decision of another federal court of appeals on the same matter. Sup. Ct. R. 17.1(a).

Petitioner does not claim that the Sixth Circuit decided an important question of federal law in a way which conflicts with applicable decisions of this Court. Sup. Ct. R. 17.1(c).

Rather, Petitioner merely avails herself of this Court in an attempt to relitigate her unfounded conspiracy claim against Respondent, Grace Hospital. Because Petitioner has failed to demonstrate special and important reasons for granting certiorari, this Court should deny her petition.

I. The Petitioner Has Failed to Demonstrate Conflicting Decisions by the Federal Courts of Appeals

A. A Federal District Court Has the Power to Limit the Discovery Practice of Litigants

Under the Federal Rules of Civil Procedure, district courts are vested with the power to monitor and regulate the discovery practice of litigants. District courts are under an affirmative duty to exercise this power when the discovery requests of a party are burdensome, oppressive or intrusive. Rule 26(b) of the Federal Rules of Civil Procedure sets out in part:

> The frequency or extent of use of the discovery methods . . . shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery

> is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion [for a protective order].

Not only do district courts have the discretionary power to monitor and limit the discovery practice of litigants, but they are encouraged to intervene when discovery requests are irrelevant or embarrassing. See Advisory Committee Notes accompanying Civil Rules 26 and 37; see also 2 J. Moore, A. Vestal & P. Kurkland, Federal Practice and Procedure Section 15.02[1] (1984).

Petitioner argues tht the district court erred in refusing to order Respondent to produce the personnel files of all terminated employees. This discovery request was clearly oppressive in that the production of these records would have

certainly invaded the privacy of the other dismissed employees. Further, Grace Hospital responded to Petitioner's discovery requests by identifying the names of its dismissed employees, the employees' positions and the reasons for their dismissals. Clearly, the district court did not abuse its discretion in refusing to order Respondent to produce the personnel files.

In affirming the district court's denial of Petitioner's motion to compel discovery, the Sixth Circuit has not sanctioned any departure from the accepted and usual course of judicial proceedings. Therefore, this Court should deny Petitioner's request for certiorari.

B. A Federal District Court Is Not Required to Make Findings of Fact and Conclusions of Law When It Grants Summary Judgment

Petitioner requests review on the issue of whether a district court must

make findings of fact and conclusions of law when it grants summary judgment. This issue does not warrant review by this Court since the federal courts are in agreement on this issue.

Rule 52(a) of the Federal Rules of Civil Procedure sets out when a district court is required to find facts and state its conclusions of law. The clear language of this rule is most instructive:

> Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

Fed. R. Civ. P. 52(a).

This Court and all of the federal courts agree that there is no requirement that a district court make findings of fact when granting summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F.2d 425 (6th Cir. 1962); Hindes v. United States, 326 F.2d

150, 152 (5th Cir. 1964), cert. denied, 377 U.S. 908 (1964) ("The only finding necessary [is] that there [is] no genuine issue as to any material fact."); Randolph-Sheppard Vendors of America, Inc., 628 F.2d 1364 (D.C. Cir. 1980). In her opposition to this well settled rule of law, Petitioner cites a case, Goldberg v. Kelly, 397 U.S. 254 (1970), which is inapposite.

Consistent with the Hindes decision, the district court's order granting Respondent's motion for summary judgment stated that "the Court finds that there is no genuine issue of material fact and that Defendant is entitled to judgment as a matter of law."

II. The Petitioner Has Failed to Identify an Important Federal Question Worthy of Review

A. A Federal District Court Does Not Deny a Party Due Process of Law When It Grants Summary Judgment

The district court found, and the court of appeals affirmed, that Respondent, Grace Hospital, did not conspire to deprive Petitioner of her civil rights. Consistent with its duties, the district court granted Grace Hospital's motion for summary judgment upon finding that "there [was] no genuine issue as to any material fact and that the moving party [was] entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

Respondent rebutted completely Petitioner's conspiracy claim with evidence of a non-discriminatory justification of its decision to terminate Ms. Cully's employment. The evidence of the case showed conclusively that Grace Hospital dismissed Petitioner for her

inability to perform safely the duties of a respiratory therapist without immediate supervision and assistance.

The federal courts have held that an employer may lawfully terminate an employee for his inability to demonstrate the qualifications necessary for the position for which he was hired. Such terminations are not the result of discrimination and they do not compromise civil rights. Peters v. Middlebury College, 409 F. Supp. 857 (D.C. Vt. 1976); Donaldson v. Pillsbury, 406 F. Supp. 1210 (D.C. Minn. 1976); Schaulis v. CTB/McGraw Hill, Inc., 496 F. Supp. 666 (N.D. Ca. 1980) ("An employer may fully refute a retaliation claim by demonstrating a non-discriminatory justification for its employment decision.").

From all of the evidence of the case, reasonable minds could only have concluded that Grace Hospital had a legitimate reason for terminating Petitioner's

employment, and that this reason did not include retaliation for a discrimination claim brought against another hospital. There was no genuine issue remaining for trial and Respondent was entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

Petitioner now argues tht a district court denies a party due process of law when it grants summary judgment. This argument has been rejected:

> A summary judgment reached in accordance with Federal Rule of Civil Procedure 56, however, satisfies the requirement of due process.

Hill v. McDermott, Inc., 827 F.2d 1040, 1042 (5th Cir. 1987), citing Celotex Corp., 477 U.S. 317.

Petitioner has failed to demonstrate that either the United States District Court for the Northern District of Ohio or the United States Court of Appeals for the Sixth Circuit has departed from the

accepted and usual course of judicial proceedings. Futher, Petitioner has failed to present an important question of federal law which has not been, but should be, settled by this Court. Therefore, Petitioner's request for certiorari fails under Supreme Court Rule 17.1.

CONCLUSION

For all of the foregoing reasons, this Court should deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

RHOA, FOLLEN & RAWLIN CO., L.P.A.

ALBERT J. RHOA
RONALD V. RAWLIN
1850 Midland Building
101 Prospect Ave., West
Cleveland, Ohio 44115
(216) 861-6886

Attorneys for Respondent,
Grace Hospital

STATEMENT REQUIRED BY RULE 28.1

Respondent, Grace Hospital, has no parents, subsidiaries or affiliates.